

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MANUEL MARQUEZ**  
Claimant

VS.

**EXCEL CORPORATION**  
Self-Insured Respondent

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Docket No. 1,014,580

**ORDER**

Claimant appealed the February 22, 2005, Award entered by Administrative Law Judge Pamela J. Fuller. The Board placed this claim on its summary docket for disposition without oral argument.<sup>1</sup>

**APPEARANCES**

Chris A. Clements of Wichita, Kansas, appeared for claimant. D. Shane Bangerter of Dodge City, Kansas, appeared for respondent.

**RECORD AND STIPULATIONS**

The record considered by the Board and the parties' stipulations are set forth in the Award. In addition, the record includes the June 22, 2004, medical report from Dr. Terrence Pratt.

**ISSUES**

Claimant injured both upper extremities working for respondent. The parties designated June 13, 2003, as the appropriate date of accident for the series of mini-traumas that claimant sustained. In the February 22, 2005, Award, Judge Fuller found claimant sustained a five percent whole person functional impairment, which was the rating provided by Dr. Terrence Pratt. Accordingly, the Judge granted claimant permanent disability benefits under K.S.A. 44-510e based upon that functional impairment rating.

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<sup>1</sup> For purposes of K.S.A. 2004 Supp. 44-551(b)(1), April 29, 2005, is the date arguments were presented to the Board.

Claimant contends Judge Fuller erred. Claimant argues Dr. Pratt ignored many of claimant's objective findings and, therefore, only provided impairment ratings for claimant's right shoulder and left wrist. On the other hand, claimant argues his medical expert witness, Dr. Pedro A. Murati, considered all of claimant's symptoms and findings and diagnosed left carpal tunnel syndrome, left wrist pain secondary to severe crepitus, right shoulder pain secondary to rotator cuff tear, and myofascial pain syndrome affecting the bilateral shoulder girdles. Accordingly, claimant requests the Board to adopt Dr. Murati's opinion that claimant has sustained a 19 percent whole person functional impairment rating.

The only issue before the Board on this appeal is the extent of claimant's functional impairment as quantified by the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.).

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

The parties agree claimant, who is right-hand dominant, injured both upper extremities working in respondent's Dodge City, Kansas, meat-processing plant. The parties also agree June 13, 2003, should be used as the date of accident in this claim for these repetitive trauma injuries. The only issue that remains in this proceeding is how the AMA Guides (4th ed.) rates claimant's permanent impairment. There is no claim for a permanent partial general disability greater than the functional impairment rating. Consequently, claimant's permanent impairment rating determines the amount of his permanent disability benefits.<sup>2</sup>

Claimant testified about his ongoing symptoms in his neck, right shoulder and left hand, wrist, and arm. But the record also includes the expert opinions of Dr. Terrence Pratt and Dr. Pedro A. Murati.

Dr. Murati examined claimant in early February 2004 at claimant's attorney's request. Claimant's chief complaints at that time were pain in his left hand, left arm, and right shoulder. After examining claimant and reviewing past medical records, including a July 2003 EMG/NCS test, the doctor diagnosed:

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<sup>2</sup> See K.S.A. 44-510e.

Left carpal tunnel syndrome. Left wrist pain secondary to severe crepitus. Right shoulder pain secondary to rotator cuff tear versus strain. Myofascial pain syndrome affecting the bilateral shoulder girdles.<sup>3</sup>

Using the *AMA Guides* (4th ed.), Dr. Murati rated claimant's bilateral upper extremity injuries as comprising a 19 percent whole person functional impairment. Breaking the 19 percent whole person functional impairment down into components, the doctor rated claimant as having a 10 percent impairment to the left upper extremity due to carpal tunnel syndrome and as having an 18 percent impairment to the left upper extremity due to the crepitus in the left wrist. And the doctor rated claimant as having a five percent impairment to the right upper extremity for loss of range of motion in the shoulder.

Dr. Murati testified that claimant had "a positive left carpal compression examination within ten seconds"<sup>4</sup> and that the EMG/NCS test showed a "conduction block over the left wrist for the median SNAP,"<sup>5</sup> both of which the doctor felt were consistent with carpal tunnel syndrome. The doctor testified, in part:

Q. (Mr. Clements) What did you base your diagnosis on the left carpal tunnel syndrome, what physical examination findings?

A. (Dr. Murati) The carpal compression, the abnormality in the sensory exams, the weakness in the hand, in the thumb, and in the two-jaw chuck. Also he has sensory and motor findings that make it a positive carpal compression exam.<sup>6</sup>

On the other hand, Dr. Pratt did not testify. But his June 22, 2004, medical report is part of the evidentiary record as the parties stipulated Dr. Pratt would examine claimant and the parties also agreed his rating would be considered as if it were a court-ordered independent medical evaluation.

Dr. Pratt diagnosed claimant as having repetitive trauma syndrome in the right shoulder and left wrist and hand discomfort. In rendering that diagnosis, Dr. Pratt believed – unlike Dr. Murati – that the July 2003 nerve conduction studies were normal for the left median and left ulnar nerves. In addition, Dr. Pratt had records from a February 18, 2004, right shoulder arthrogram, which failed to disclose a rotator cuff tear.

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<sup>3</sup> Murati Depo. at 9.

<sup>4</sup> *Id.* at 12.

<sup>5</sup> *Id.* at 15.

<sup>6</sup> *Id.* at 15-16.

Dr. Pratt noted claimant had a loss of range of motion and crepitus in his right shoulder. Using the *AMA Guides* (4th ed.), Dr. Pratt rated claimant as having a three percent functional impairment to his right upper extremity and shoulder due to the range of motion deficit and a three percent functional impairment due to the crepitus. The doctor wrote, in part:

At this time, the Fourth Edition of the *AMA, Guides to the Evaluation of Permanent Impairment* was utilized, specifically Chapter Musculoskeletal System. For the right shoulder involvement, he had an arthrogram without any evidence of rotator cuff involvement. He continues to be symptomatic and has a decrease in active movement as well as some intermittent AC joint crepitus. With use of Figure 38 on page 3/43, flexion to 160 degrees would result in one percent (1%) impairment of the extremity. The extension would not result in any additional. Page 3/44, Figure 41, his limitations in abduction to 135 degrees would result in two percent (2%) impairment of the extremity. Adduction to 40 degrees results in zero percent (0%). His internal and external rotation result in no additional. Utilizing range of motion only, he has a three percent (3%) impairment of the extremity. There was giveaway as opposed to specific weakness of the shoulder. I did consider crepitus with page 3/58 and 3/59, Tables 18 and 19, and ten percent (10%) impairment of the AC joint would result in a three percent (3%) impairment of the extremity as well. For the right shoulder involvement, he has a three percent (3%) impairment of the extremity without significant findings on his arthrogram. The assessment occurred on a functional basis.

Likewise, using the *AMA Guides* (4th ed.), Dr. Pratt rated claimant's left upper extremity for the left wrist injury. Stating the "electrodiagnostic study did not reveal significant findings suggestive of significant median nerve entrapment at the wrist or ulnar entrapment at the wrist," the doctor concluded claimant sustained a five percent functional impairment to the left upper extremity. The doctor combined the three percent right upper extremity rating with the five percent left upper extremity rating, which produced a five percent whole person impairment.

The parties jointly selected Dr. Pratt to provide an unbiased evaluation of claimant's injuries. Dr. Pratt had the results from claimant's February 18, 2004, right shoulder arthrogram whereas it is unclear if Dr. Murati had that information. As indicated above, the Judge adopted Dr. Pratt's analysis and awarded claimant benefits for a five percent permanent partial general disability under K.S.A. 44-510e. The Board finds no persuasive reason to disturb that finding and adopts it as its own. Consequently, the February 22, 2005, Award should be affirmed.

**AWARD**

**WHEREFORE**, the Board affirms the February 22, 2005, Award entered by Judge Fuller.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May, 2005.

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BOARD MEMBER

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**DISSENT**

I respectfully dissent. Dr. Pratt's report raises questions that are not answered. Dr. Pratt states the electrodiagnostic studies did not reveal *significant* findings that suggested *significant* median nerve entrapment. Does that mean the doctor found moderate median nerve entrapment? Also, Dr. Pratt found that claimant had a three percent impairment of the right upper extremity due to crepitus and a three percent impairment to the same extremity "[u]tilizing range of motion." Even so, the doctor rated the right upper extremity impairment at three percent. Did the doctor intend to combine those ratings or does his June 22, 2004, medical report contain a clerical error?

Because of the questions raised by Dr. Pratt's report, I am not persuaded that the June 2004 medical report reflects claimant's permanent impairment. Consequently, I would average the impairment ratings from Dr. Pratt and Dr. Murati.

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BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant  
D. Shane Bangerter, Attorney for Respondent  
Pamela J. Fuller, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director